

Case No. 7,439.

JOLLY ET AL. V. THE NEPTUNE.

[2 Pet. Adm. 345.]¹

District Court, D. Pennsylvania.

1804.

PRIZE—ILLEGAL CAPTURE AND CONDEMNATION.

The brigantine Neptune, belonging to the libellants, was captured by a French privateer and condemned by a court held on board a French vessel at sea, and having been purchased by the respondent, was, brought into the port of Philadelphia. The district court ordered her to be restored to her former owners.

To the Honourable Richard Peters, Esquire, Judge of the District Court of the United States, in and for the Pennsylvania District:

The libel of John Jolly and Richard Keys, of the city of Baltimore, in the state of Maryland, merchants, and William Manson, of the same place, mariner, respectfully sheweth, that your libellants are citizens of the United States of America, resident in Baltimore, in the state of Maryland, and are joint-owners of the brig Neptune of Baltimore, a duly registered vessel of the United States, as will more fully appear by an authentic copy of the certificate of her registry, hereunto annexed, bearing date the seventh day of July, in the year of our Lord one thousand eight hundred and two. That the said brig, owned as aforesaid, and commanded by the said William Manson, sailed from the port of Baltimore on or about the thirteenth day of September last past, with a cargo on board belonging to your libellants, on a voyage to Surinam, from thence to the West Indies and back; that while she was peaceably and lawfully pursuing her said voyage on the high sea, the said brig and her cargo on or about the ninth day of December last past, were tortiously, forcibly and piratically seized, taken possession of and detained, by a French privateer called "The Serpent," Henry Anderson, commander, and the said brig sent into St. Jago de Cuba, where, as your libellants have been informed and believe, the cargo was sold or disposed of. That since the seizure as aforesaid, the said brig has been brought into the port of Philadelphia in the district of Pennsylvania, and within the jurisdiction of this honourable court, where she now lies, by a certain Paul Coulon, and other persons, to your libellants unknown. That your libellants, thereupon, pray the aid of the process of this honourable court to arrest and attach the said brig, and that the same be decreed to be restored to them, together with such damages to be paid by the said Paul Coulon and others, for the said seizure, detention and spoliation of the said brig and cargo, as to this honourable court shall seem just and proper. John Hollowell, for libellants.

In the matter of the suit civil and maritime in the district court of the United States, for the district of Pennsylvania, by John Jolly and Richard Keys, of the city of Baltimore, in the state of Maryland, merchants, and William Manson, of the same place, mariner, against the brig Neptune, her tackle, apparel and furniture, the claim of Paul Coulon, in

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all humble manner, sheweth, that on the sixth day of November, in the year of our Lord one thousand eight hundred and three, and for a long time before and continually since, the island of St. Domingo in the West Indies, belonged to and was lawfully a colony of the French republic, and was subject to its laws, regulations and ordinances, and that at the same time, and long before and continually since, there existed a rebellion in the said island against the said French republic, and certain revolted negroes in the said island openly opposed by force of arms the jurisdiction

and authority of the said republic over the said island, and that in order to suppress the said insurrection and rebellion, certain laws, ordinances and regulations had been duly made and promulgated by the said republic or her agents thereunto lawfully authorized, whereby all manner of intercourse, trade and dealing was prohibited to persons foreigners to the said French republic, with any other part of the said island but the two ports of Cape François and Port Republican, and all foreign vessels entering or attempting to enter any other port of the said island than the said two ports before mentioned, for any purpose of intercourse with the said revolted negroes, were declared to be liable to confiscation. And your claimant further sheweth, that on or about the said sixth day of November in the same year, the said brig was employed by a certain William Manson the master or commander of her, in carrying on prohibited trade and intercourse with the said revolted negroes in the said island, and for that purpose did enter or attempt to enter the port of Jacmel in the said island (being a port in the said island other than the said ports of Cape François and Port Republican), and was then sailing on the high seas, bound to Les Gayes, another prohibited port in the said island, and was in the prosecution of such her unlawful voyage, when she was arrested and captured by a certain armed cruiser, called "Le Serpent," commanded by a certain Henry Anderson, who was duly authorized and commissioned by the French republic for that purpose, and by the said Henry Anderson impleaded and prosecuted for such unlawful trade, and duly condemned and adjudged to be forfeited therefor, by a competent tribunal, acting under the authority of the said French republic, and by the same authority duly sold to the said Paul Coulon, for a full and valuable consideration. And the said Paul begs leave to state that by reason of the premises he became, and ever since the ninth day of February, in the year one thousand eight hundred and four hath been, and yet is, the lawful owner of the said brig, her tackle, apparel and furniture, and has laid out considerable sums of money in equipping and ameliorating the said brig. Wherefore he prays, that the said libel of the said John Jolly, Richard Keys and William Manson, may be dismissed, and that the said brig may be restored to him with his costs and charges and all damages in this behalf most wrongfully sustained. P. Coulon. Mr. Levy, for claimant

The above P. Coulon being solemnly sworn, doth depose and say, that what is contained in this his answer, as far as concerns his own act and deed, is true of his own knowledge, and that what relates to the act and deed of any other person or persons he believes to be true. P. Coulon.

The reply of John Jolly, Richard Keys and William Manson, libellants, to the claim of Paul Coulon, exhibited and filed in this cause. These repliants saving and reserving to themselves all and all manner of exceptions to the manifest uncertainties, imperfections and insufficiencies in the said claim contained, for reply thereto, aver, propound and say, that the said brig Neptune was employed by her said owners, the libellants, in a voyage

from the port of Baltimore, in the state of Maryland, to Surinam, thence to the West Indies, and back to the said port, as in their said libel is set forth. But they deny that the said brig was so employed in carrying on any unlawful trade and intercourse, to or at the island of St. Domingo, or to or at any port or place in the said island, or that she was in the prosecution of an unlawful voyage, when she was arrested and captured by the French privateer, called, "The Serpent," as in and by the claim of the said Paul Coulon is most untruly stated and alleged. And these repliants further propound, aver, and say, that they have heard and believe, that an insurrection, or revolt had taken place among certain negroes in the said island of St. Domingo, the same being then a colony of the French republic, though they do not know at what time such insurrection or revolt commenced, how long it has lasted, or to what parts of the said island it extended. But these repliants deny, that either at the time of the sailing of the said brig from the said port of Baltimore as aforesaid, or at the time of the said arrest and capture of the said brig by the said French privateer on the high seas as aforesaid, or at any time before, or since, to their knowledge, any laws, ordinances or regulations had, or have been duly made and promulgated by the said French republic, or her agents thereunto lawfully authorized, whereby all manner of intercourse, trade and dealing was prohibited to persons, foreigners to the said French republic, with any other port of the said island but the two ports of Cape François, and Port Republican: and whereby all foreign vessels entering or attempting to enter, any other port of the said island, than the said two ports, for any purpose of intercourse with the said revolted negroes, were declared to be liable to confiscation. And these repliants further propound, aver and say, that although true it is that the said brig Neptune did, in the course of her said lawful voyage, enter the port of Jacmel in the said island of St. Domingo, to wit on or about the——day of——, in the year 1803, yet she did not enter the same for any purpose of intercourse or prohibited trade with the said revolted negroes, nor was she bound to Les Cayes (another prohibited port of the said island as in the said claim is alleged, but which is not hereby admitted,) when she was arrested and captured by the said French privateer as aforesaid. And these repliants further propound, aver and say,

that if any such laws, ordinances and regulations were made as in the said claim of the said Paul Coulon is stated and alleged (but which these repliants do by no means confess or admit) the same were not duly notified, and were altogether unknown to them, and more particularly to the said William Manson, commander of the said brig, as well at the time of her sailing from the said port of Baltimore on her voyage aforesaid, as at the times respectively of her entering the said port of Jacmel as aforesaid, and of her being arrested and captured by the said French privateer as aforesaid. And these repliants further propound, aver and say, that the said French privateer called "The Serpent," commanded by the said Henry Anderson, was not duly authorized and commissioned by the said French republic, to arrest and capture the said brig Neptune as aforesaid: and that the said Henry Anderson did not in due form of law, and according to the convention subsisting between the United States of America and the said French republic, prosecute the said brig Neptune; and that the same was not duly condemned and adjudged to be forfeited by a competent tribunal, according to the law of nations and the said convention. Nor was the said brig by such competent authority duly sold to the said Paul Coulon for a full and valuable consideration; nor did the said Paul Coulon on the ninth day of February, in the year 1804, or at any other time before or since, become the lawful owner of the said brig, her tackle, apparel and furniture; nor has he laid out considerable sums of money in equipping and ameliorating the same. But these repliants aver, that the said brig and her cargo were falsely, forcibly and piratically seized, taken possession of, retained and disposed of, by the said French privateer, as in and by their said libel is stated and alleged; and thereupon they pray that the said claim of the said Paul Coulon may be dismissed with costs, and that the said brig be decreed to be restored to them, together with such damages to be paid by the said Paul Coulon for the said seizure, detention and spoliation of the said brig and cargo, as to this honourable court shall seem just and proper. John Hollowell, for respondents.

PETERS, District Judge. The statement of this case may be collected, in detail, from the proceedings. The brig in question and her cargo were said to have been captured by the privateer Serpent, commanded by a certain Henry Anderson, averred to have been commissioned by the French republic on a voyage, as it is alleged then performing by the brig Neptune, from a port of St. Domingo, to another port of that island, both interdicted by the military commander in that island; all intercourse being prohibited with any other than two ports, viz. Cape François and Port Republican. The port (Jacmel) at which the brig had been, or that to which she was said to be destined (Les Cayes) were not licensed, but prohibited ports, in possession of the blacks, who are stated to be forbidden by certain ordinances of the authorized agents of the French republic in St. Domingo, as well to neutrals as to French vessels.

The facts stated in the libel and other proceedings by the libellants are shortly these—the brig Neptune, an American registered vessel, and her cargo, belonged to the libellants, residents in Baltimore and citizens of the United States; and was employed in lawful commerce, on a voyage from Baltimore to Surinam, thence to the West Indies and back to the port of Baltimore. They deny that she was in the prosecution of any unlawful trade or intercourse, to or at the island of St. Domingo, or to or at any port in that island. They deny also that they knew of any laws, ordinances or regulations made or promulgated by the French republic prohibiting intercourse with any other than the two ports before mentioned: and although she had touched at Jacmel, with no intention to carry on any prohibited trade or intercourse, yet she was not bound to Les Cayes when she was arrested and captured by the *Serpent*. They deny that the privateer was duly commissioned, aver that the brig, being tortiously captured, was not prosecuted and impleaded according to the convention subsisting between the United States and the French republic. That the said brig was not condemned by a competent tribunal, or sold to the claimant, Paul Coulon, for a full and valuable consideration, by lawful and competent authority, &c. That the vessel was a registered vessel of the United States, and belonged to the libellants at the time of her sailing from Baltimore and capture, are in proof and not denied. The pretended condemnation of this vessel is attempted to be proved, by alleged copies of the proceedings of a tribunal sitting on board a French vessel at sea, on board whereof were the military commander of part of the island of St. Domingo, together with two others, who style themselves officers of the court of prizes established under the French republic, at the Mole, in the island of St. Domingo. By this alleged tribunal, in which M. de Noailles, a French general presided, a proceeding was had, in the absence of the captured vessel, which had been sent for a port in the island of Cuba. This proceeding began at seven o'clock in the morning of the day on which it was finished: the commencement and conclusion of the cause occupied but a few hours, under the idea of the necessity of urgency, as therein stated. It appears on the face of the copies of these proceedings, that they were had at sea, and far beyond any jurisdictional limits claimed by any country. The French part of the island of St. Domingo had been abandoned by the officers civil and military of the French republic. Those who were then on board of the vessel carrying these officers, who held the supposed court, were driven from the

place wherein their authority had been exercised, and were then flying from the blacks, who had gained possession of the scene of their former alleged jurisdiction.

There is no other proof of any facts alleged by the claimant than that contained in the exhibits purporting to be copies of these proceedings. And whether this alleged court and its proceedings are lawful, and such as I am bound to respect, is the main question in this cause.

I have no hesitation in declaring that in my opinion, that pretended court was unlawful. It was not warranted by the usage and laws of nations, or the convention between the United States and France. It would be an unnecessary waste of time to shew by any reasoning or authorities, that that court was illegitimate. The officers then composing it—the place where it was held, and the circumstances attending the whole transaction—the haste and informality, and (it being an unauthorized tribunal) I may add the injustice of its proceedings, afford ample data to justify me in rejecting all proofs, or legal effects, claimed under its allegations or decrees: sufficient evidence to warrant every objection, appears on the face of its proceedings.—There is no proof therefore, before me, that the property of the vessel in the libel mentioned has been lawfully divested from her American owners. I do therefore adjudge, order and decree, that the said brigantine Neptune with her tackle, apparel and furniture be restored to the libellants with costs and charges.

[A claim for salvage was made by the purchaser, Coulon, after this condemnation, he having brought the vessel within the power of her former owners. The claim was dismissed. Case No. 3,273.]

¹ [Reported by Richard Peters, Jr., Esq.]